IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1074 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ADAM ABHARAM ASMAL

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

1. Civil Revision Application No. 1074 of 2001

MR JAYESH M PATEL for Petitioners No. 1-2

MR AJ PATEL for Petitioners No. 1-2

RULE SERVED BY DS for Respondent No. 1

MR RM CHAUHAN, GOVERNMENT PLEADER for Respondent No. 2

MR RC JANI for Respondent No. 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 06/12/2001

ORAL JUDGEMENT

#. Heard learned advocate Mr.A.J.Patel for the

petitioner and learned AGP Mr.R.M.Chauhan for the respondent Nos.1 and 2. Respondent No.3 though represented by the learned advocate Mr.R.C.Jani but respondent No.3 is a formal party.

#. The fact discloses that the land of the present applicants came to be acquired under the Land Acquisition Act. The Land Acquisition Officer awarded some amount vide his order dated 25.2.1997. The claimants - present applicants applied for the reference to the District Court and learned Assistant Judge, Bharuch by judgment and award dated 26.2.1994 partly allowed the said references and held that the claimants were entitled to receive compensation at the rate of 600/- per Are. including the other consequential benefits. Thereafter, it appears that the awarded amount was deposited by the respondents in the Court of learned District Judge at Bharuch and on 27.6.2001, the claimants preferred an application in said Land Reference Case No.492/1987 to make them payment of awarded amount which was deposited by the present respondent in the Court. However, the learned Assistant Judge, Bharuch vide his order dated 31.8.2001 came to the conclusion that as per the instructions contained in Civil Manual no payment can be made to the applicants because appeals have been filed. The learned Assistant Judge, Bharuch negatived the contentions of the claimant that since acquiring body though have filed First Appeal in the High Court of Gujarat did not bring any stay order, the amount was required to be paid to the claimants and, therefore, the application to make the payment to the claimants came to be dismissed by the learned Assistant Judge, Bharuch.

#. The fact remains that against the award passed by the learned Extra Assistant Judge, Bharuch that First Appeal has been filed by the respondents and the same is on admission before this Court. No order is passed about making payment to the claimants by this Court in the above said First Appeal filed by the present respondents. Therefore, the facts of the case is clearly covered by a decision of Apex Court in the matter of Central Bank of India Vs. State of Gujarat and others, as reported in Gujarat Law Reporter, Vol.29 1988 (2) page 800 wherein the Supreme Court ruled that in the absence of an order of stay the decree was executable and, once the decretal dues had come in the Executing Court there was indeed no justification for the direction to refund the same to the judgment-debtor. The Supreme Court further ruled that mere filing of an appeal does not operate as a stay against the execution of decree. Irrespective of, therefore, whatever contained in the Civil Manual the law

which is laid down by the Supreme Court is, the decree is executable unless the stay is granted by the higher Appellate Court and mere filing an appeal would not operate as a stay on execution of a decree.

#. In this view of the matter, the order impugned passed by the learned Assistant Judge, Bharuch on 31.8.2001 is clearly erroneous and against the settled legal principle. When there is no stay on execution of decree there was no reason for the learned Assistant Judge, Bharuch to refuse the amount deposited by the respondent of the award in the Court. This was the group of the matter main case was Land Reference Case No.492/1987 by which 20 Land References were disposed of and a group of Appeal bearing Nos.3201/1997 to 3220/1997 have been filed in this Court.

#. While setting aside the order impugned passed by the learned Assistant Judge on 31.8.2001 it is directed that the learned Assistant Judge shall give time to the respondents for obtaining orders in the above said group of appeals for the staying of the execution till 10 weeks from today. If within this 10 weeks no stay is granted on the execution of a decree then the learned Assistant Judge, Bharuch shall make payment to the present applicants - claimants or shall make the payments to the applicants as may be directed by this Court in above mentioned First Appeals, as the case may be. With the above said order this Revision Application is allowed. Rule is made absolute to that extent.

(J. R. VORA, J.)

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